



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCIO

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

**MEMORANDUM**

TO Board of Environmental Protection

FROM Mark Hyland  
Acting Director, Bureau of Remediation and Waste Management

DATE November 2, 2006

RE Rusty Peters d/b/a R&R Construction, Administrative Consent Agreement

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Statutory and Regulatory References 38 M.R.S.A. 347-A(1), 38 M.R.S.A. Section 1271 to 1284, 06-096 CMR 425.3(B)(1), 425.4(B)(2); 425.6(C) and 425.7 (notification, licensing, project design and work practice violations)

Location Waterville, Maine

Description: On May 23, 2006, Department staff performed an on-site compliance inspection at 148-150 College Ave. in Waterville, Maine, in response to a complaint concerning the improper removal of asbestos-containing materials. After arriving on site, Department staff met with representatives of Rusty Peters d/b/a R&R CONSTRUCTION who informed Department staff that Rusty Peters d/b/a R&R CONSTRUCTION had been retained by the building owner to renovate the building. Rusty Peters d/b/a R&R CONSTRUCTION representatives stated to Department staff that the renovation project encompassed renovating the basement area. Department staff entered into the basement area and observed an old abandoned boiler with pieces of old suspect insulation adjacent to it. Department staff also observed segments of old suspect asbestos pipe insulation on the floor underneath the piping associated with the heating system. Department staff further observed suspect transite sheeting debris on the floor. Department staff sampled the suspect materials. Subsequent analysis showed the suspect material was asbestos-containing. Rusty Peters d/b/a R&R CONSTRUCTION representative informed Department staff that while Rusty Peters d/b/a R&R CONSTRUCTION personnel had removed the asbestos transite sheeting from ceiling, without being aware that it was asbestos containing, Rusty Peters d/b/a R&R CONSTRUCTION personnel had not removed any of the thermal system insulation from either the boiler or its associated piping.

**AUGUSTA**

17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX (207) 287-7826  
RAY BLDG., HOSPITAL ST

**BANGOR**  
106 HOGAN ROAD  
BANGOR, MAINE 04401  
(207) 941-4570 FAX (207) 941-4584

**PORTLAND**  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX (207) 822-6303

**PRESQUE ISLE**  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
(207) 764-0477 FAX (207) 760-3143

Rusty Peters d/b/a R&R CONSTRUCTION was neither licensed nor certified to remove asbestos-containing transite sheeting. The removal activity was conducted without the use of any mandated work practice and engineering controls designed to prevent the release of asbestos fibers. Rusty Peters d/b/a R&R CONSTRUCTION did not comply with all applicable design practices, nor was the Department notified prior to the abatement activity.

Following the Department's May 23, 2006 on-site inspection, Rusty Peters d/b/a R&R CONSTRUCTION retained the services of a licensed asbestos abatement contractor to remove, containize and dispose of the asbestos-containing materials observed in the basement area. An independent asbestos consultant then conducted a visual evaluation and air clearance sampling event at the conclusion of the clean-up activity. These activities were conducted on June 5 and 6, 2006.

Procedural Issues: Violations were observed during a routine contractor compliance inspection conducted by Department staff on May 23, 2006.

Environmental Issues: While the impact of this particular release of asbestos fibers is unknown at this time due to the 10 to 30 year latency period for asbestos-related diseases, failure to comply with asbestos laws can result in increased risk of harm to human health and the environment from the increased presence of asbestos fibers.

Department Recommendation: Approve Consent Agreement resolving violations of Department regulations as described above, and approve the penalty in the amount of three thousand dollars (\$3,000.00) as presented in the Agreement. The penalty is based on the gravity of violations, which could potentially endanger the health of workers and the public.

Estimated Time of Presentation:

N/A

Staff contact person:

James Tansey, Enforcement Coordinator  
Lead and Asbestos Hazard Prevention Program  
Division of Solid Management  
Bureau of Remediation and Waste Management

Attachment. Rusty Peters d/b/a R&R Construction, Administrative Consent Agreement

Board Memo 2006-6



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE HOUSE STATION 17  
AUGUSTA, MAINE 04333

BOARD ORDER

IN THE MATTER OF

RUSTY PETERS d/b/a R&R CONSTRUCTION	)	ADMINISTRATIVE
100 HOWE RD	)	CONSENT
WHITEFIELD, MAINE 04533	)	AGREEMENT
NOV No 2006-6	)	

This Agreement by and among Rusty Peters d/b/a R&R CONSTRUCTION, the Maine Board of Environmental Protection ("Board"), and the State of Maine Attorney General is entered into pursuant to 38 M.R.S.A. Section 347-A(1) and in accordance with the Department of Environmental Protection ("Department") Consent Agreement Policy, as amended

The parties agree as follows.

- 1 R&R CONSTRUCTION is a sole proprietorship construction company in Whitefield, Maine. Rusty Peters is the owner of R&R CONSTRUCTION.
2. At all times relevant to this Agreement Rusty Peters d/b/a R&R CONSTRUCTION was subject to the requirements of Maine's asbestos laws, 38 M.R.S.A. Sections 1271 to 1284, and the Department's *Asbestos Management Regulations*, 06-096 CMR 425 (May 29, 2004).
- 3 On May 23, 2006, Department staff performed an on-site compliance inspection at 148-150 College Ave. in Waterville, Maine, in response to a complaint concerning the improper removal of asbestos-containing materials. After arriving on site, Department staff met with representatives of Rusty Peters d/b/a R&R CONSTRUCTION who informed Department staff that Rusty Peters d/b/a R&R CONSTRUCTION had been retained by the building owner to renovate the building. Rusty Peters d/b/a R&R CONSTRUCTION representatives stated to Department staff that the renovation project encompassed renovating the basement area. Department staff entered into the basement area and observed an old abandoned boiler with pieces of old suspect insulation adjacent to it. Department staff also observed segments of old suspect asbestos pipe insulation on the floor underneath the piping associated with the heating system. Department staff further observed suspect transite sheeting debris on the floor. Department staff sampled the suspect materials. Subsequent analysis showed the suspect material was asbestos-containing. Rusty Peters d/b/a R&R CONSTRUCTION representative informed Department staff that while Rusty Peters d/b/a R&R CONSTRUCTION personnel had removed the asbestos transite sheeting from ceiling, without being aware that it was asbestos-containing, Rusty Peters d/b/a R&R CONSTRUCTION personnel had not

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) CONSENT  
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)

removed any of the thermal system insulation from either the boiler or its associated piping

Rusty Peters d/b/a R&R CONSTRUCTION was neither licensed nor certified to remove asbestos-containing transite sheeting. The removal activity was conducted without the use of any mandated work practice and engineering controls designed to prevent the release of asbestos fibers. Rusty Peters d/b/a R&R CONSTRUCTION did not comply with all applicable design practices, nor was the Department notified prior to the abatement activity.

Following the Department's May 23, 2006 on-site inspection, Rusty Peters d/b/a R&R CONSTRUCTION retained the services of a licensed asbestos abatement contractor to remove, containerize and dispose of the asbestos-containing materials observed in the basement area. An independent asbestos consultant then conducted a visual evaluation and air clearance sampling event at the conclusion of the clean-up activity. These activities were conducted on June 5 and 6, 2006.

- 4 The actions described in paragraph 3 of this Agreement are violations of the Department's asbestos management laws and regulations, as follows:
  - A Failure to notify the Department in writing of intention to engage in an asbestos abatement activity involving more than 3 linear feet or 3 square feet of asbestos-containing material. 38 M.R.S.A. Section 1273(2), 06-096 CMR 425.3(B)(1),
  - B Failure to use licensed or certified asbestos professionals to engage in an asbestos abatement activity. 38 M.R.S.A. Section 1273(1), 06-096 CMR 425.4(B)(2),
  - C Failure to comply with all applicable project design requirements prior to engaging in an asbestos abatement activity. 06-096 CMR 425.6(C);
  - D Failure to comply with all applicable work practice requirements while engaging in an asbestos abatement activity. 06-096 CMR 425.7,
- 5 On July 11, 2006 the Department issued Rusty Peters d/b/a R&R CONSTRUCTION a Notice of Violation for the violation(s) described in paragraphs 3 and 4 of this Agreement as required by 38 M.R.S.A. 347-A(1)(B).
- 6 The Board has regulatory authority over the activities described herein.
- 7 This Agreement shall become effective only if it is accepted by the Board and approved by the Attorney General.

RUSTY PETERS d/b/a R&R CONSTRUCTION  
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NOV No 2006-6

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)

- 8 To resolve the violations referred to in paragraphs 3 and 4 of this Agreement, Rusty Peters d/b/a R&R CONSTRUCTION paid the Treasurer, State of Maine, a civil monetary penalty of three thousand (\$3,000.00) dollars
- 9 The Board and the State of Maine Attorney General grant Rusty Peters d/b/a R&R CONSTRUCTION a release of their causes of action against Rusty Peters d/b/a R&R CONSTRUCTION for the specific violations described in paragraphs 3 and 4 of this Agreement, on the express condition that all actions listed in paragraph 8 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective unless and until this condition is satisfied

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three pages

R&R CONSTRUCTION

  
\_\_\_\_\_  
Rusty Peters d/b/a R & R CONSTRUCTION

DATE 10-28-06

BOARD OF ENVIRONMENTAL PROTECTION

BY \_\_\_\_\_  
Matthew Scott, Chair

DATE \_\_\_\_\_

SEEN AND AGREED TO.  
STATE OF MAINE

BY \_\_\_\_\_  
Janet M McClintock, Asst Attorney General

DATE \_\_\_\_\_